

PLANNING BOARD OF THE CITY OF BANGOR

MEETING OF APRIL 5, 2005

MINUTES

Board Members Present:

**Robert Guerette
Hal Wheeler
David Clark
Nat Rosenblatt
Ryan King
Laura Mitchell
Bill Masters**

City Staff Present:

**David Gould
James Ring
Peter Witham
Lynn Johnson**

City Councilors Present:

**Council Chair Farrington
Councilor Hawes**

News Media Present:

None

ELECTION OF OFFICERS

Item No. 1: Election of Officers for 2005.

Chairman Guerette opened the item up for discussion. Mr. Rosenblatt said that he would like Mr. Guerette to continue as Chairman of the Planning Board. Mr. Rosenblatt said that Chairman Guerette has done an excellent job in eliciting comments from citizens in the Board's effort to move forward with the Comprehensive Plan Update and has served the Board very well. Mr. Rosenblatt nominated Mr. Guerette as Chairman for the Planning Board for 2005. Mr. Wheeler seconded the motion. Mr. King moved that nominations cease. Mr. Rosenblatt seconded the motion. The Board voted 5 in favor and 0 opposed to the motion to cease nominations. A vote was taken, and the Planning Board voted unanimously in favor of the motion to elect Mr. Guerette as Chairman for 2005.

Chairman Guerette thanked the Board Members for their support and asked for nominations for Vice Chairman for 2005. Chairman Guerette nominated Mr. Wheeler as Vice

Chair for 2005 adding that Mr. Wheeler has been helpful especially in getting discussions steered into the right direction. Mr. Masters seconded the motion. Mr. King moved to cease nominations for Vice Chairman. Mr. Clark seconded the motion to cease nominations. The Board voted 5 in favor and 0 opposed to cease nominations. Chairman Guerette asked for a motion on the nomination for Vice Chairman. The Board voted unanimously (5 in favor and 0 opposed) in favor of electing Mr. Wheeler as Vice Chairman for 2005.

PUBLIC HEARINGS

Item No. 2: Preliminary Subdivision Plan approval for a 9-lot subdivision located on the west side of Mecaw Road of which 5 lots are located in Bangor in an Industry and Service District and the remaining 4 lots being located in the Town of Hampden. Mecaw Road Developers, LLC, applicant.

Chairman Guerette opened the Public Hearing and explained that he would ask proponents to speak first, followed by opponents, and then by Staff. Mr. Rosenblatt indicated that he needed to recuse himself from discussions on Item No. 2, and Item No. 4 as the applicants are clients of his law office. Mr. Rosenblatt noted that under Maine Bar Rules, he cannot participate. It was the consensus of the Board to recuse Mr. Rosenblatt from consideration of Items No. 2 & No. 4. Chairman Guerette asked Associate Member Mitchell to vote on Item No. 2 and Associate Member Masters to vote on Item No. 4.

Chairman Guerette asked for comments from the applicant. Mr. David Moyse, a principal of Mecaw Road Developers, LLC, explained that they are proposing a 9-lot business subdivision located off of Mecaw Road. Four of the proposed lots are located in Hampden while the remaining 5 lots are located in Bangor. All of the lots are proposed to be serviced by public water and have on-site waste disposal systems. Mr. Moyse indicated that the lots are designed for small businesses like his own and he plans to build on Lot 1 and sell the remaining lots. The proposed road is approximately 1,000 feet, and 24 feet wide with 3-foot gravel shoulders.

Chairman Guerette asked if there would be warehousing. Mr. Moyse indicated that he anticipates small offices, or possibly a small courier service.

Chairman Guerette then opened the meeting up to opponents. There being none, Chairman Guerette closed the Public Hearing and asked for staff comments. Mr. David Gould, Planner, explained that this is an application for Preliminary Subdivision Plan approval for Mecaw Road Developers, LLC. This is a unique subdivision in that it crosses the municipal boundaries of both Bangor and Hampden. Access to the development is off of Mecaw Road in Hampden. Mr. Gould noted that Bangor's Subdivision Regulations require that a provision be made for a 5% open space reservation and that the applicant has reserved an area that is suitable in this industrial area. Mr. Gould also noted that the Ordinance requires that lots with no public sewer be a minimum of one acre. He noted that the lots located in Bangor are considerably larger than those to be located in Hampden. The lots will have public water service and the applicant has demonstrated that the lots meet the State's soil standards.

Mr. Gould indicated that there was a recent Ordinance amendment that allows 66-foot wide rights-of-way for industrial and commercial subdivisions that meet three criteria: 1) that the street cannot be a through street; 2) that no more than 10 lots can be served; and 3) that the City Engineer provide a written report that the 66 foot right-of-way width is adequate for the projected traffic and utilities. Mr. Gould noted that a Memorandum from City Engineer James Ring was provided to the Board indicating that this Preliminary Subdivision Plan is consistent with these new requirements.

Mr. Gould indicated that there has been concern by both municipalities that the lots be designed in such a way that the majority of the development upon the lots be in one community or the other. The actual development dictates where site plan approval will need to be obtained. That way, they would not have to get approval in both communities. The State Subdivision Laws indicate that when subdivisions cross municipal boundaries, the two respective Planning Boards should hold a joint hearing unless this requirement is waived by the Planning Boards. Because this is not a large subdivision, Staff recommended that the Planning Board waive the requirement for a joint hearing and let both Planning Boards have their own hearings. Mr. Gould noted that the Preliminary Plan meets all submittal requirements, and the Planning Staff also recommended Preliminary Subdivision Plan approval.

Mr. Clark asked if the Board had the authority to approve all nine lots. Mr. Gould noted that the Board is being asked to approve the portion that lies within the City of Bangor and the portion that lies in Hampden needed approval by the Hampden Planning Board. He also noted that the mylars for this subdivision would need to be signed by both Planning Boards. If either Board did not approve or sign, there would not be an approved subdivision.

Mr. Bob Osborne, Hampden Town Planner, indicated that the Hampden Planning Board has discussed this issue and it is the general consensus that they are not sensing a reason to have a joint meeting as this is a relatively modest subdivision proposal.

Mr. King had questions regarding the wetlands and how they might be affected. Mr. Moyse indicated that there was a small wetland area that would need to be crossed. The total impact is about 3,700-square feet of wetland alteration and that is below the Department of Environmental Protection's 4,300-square foot threshold. Therefore, a permit will only be required for a stream crossing. Mr. Moyse also pointed out on the preliminary plan some forested wetland areas, a tributary of Sucker Brook, and an area that will need to be permitted as a stream crossing for a driveway.

Chairman Guerette asked for a motion to waive the requirement for a joint Public Hearing. Mr. Wheeler moved to waive the requirement for a joint Public Hearing with the Town of Hampden. Mr. Masters seconded the motion. The Planning Board voted 5 in favor and 0 opposed to the motion waiving the joint public hearing requirement. Mr. Wheeler then moved to grant Preliminary Subdivision Plan Approval to Mecaw Road Developers, LLC, on Mecaw Road in accordance with the recommendation of Staff. Ms. Mitchell seconded the motion that also passed by a voted of 5 to 0.

APPROVAL OF MINUTES

Chairman Guerette deferred consideration of the Minutes to the end of the Agenda.

NEW BUSINESS

Item No. 4: Final Subdivision Plan approval of Phase I of the Edgewood Subdivision consisting of 41-lots and being located off of Essex Street in a Rural Residence and Agricultural District. Walden Parke, LLC applicant.

Dr. Frederick Oldenburg, one of the applicants, explained that Walden Parke, LLC had obtained Preliminary Plan approval from the Planning Board on March 1, 2005, for an 82-lot subdivision located off of Essex Street. At that time, the Preliminary Plan was approved with two conditions: that there be no lot fragments on parcels located near Essex Street and that an access to Forest Avenue be given to the City for an emergency right-of-way. Dr. Oldenburg indicated that the lot fragment issue had been taken care of and that an agreement had been signed with City to deal with access through to Forest Avenue. Dr. Oldenburg indicated that the Final Plan approval is for Phase I and consists of 41 of the 82 total lots proposed. Phase I involves constructing a major access road across land of Anna Fiori off of Essex Street and parts of other roads within the subdivision to provide access to the 41 lots. Phase I also includes a land gift of 210 acres to the Bangor Land Trust, as well as, 39 acres near the City Forest, with rights to railroad bed, to the City of Bangor.

Chairman Guerette asked if there were any opponents. No one spoke in opposition. Chairman Guerette then asked for comments from Staff. Planner David Gould explained that Walden Parke, LLC, is seeking Final Subdivision Plan of Phase I of the Edgewood Subdivision. The Planning Board approved the Preliminary Subdivision Plan at its March 1, 2005 Meeting. The applicant is seeking Final Plan approval of Phase I that contains 41 lots (half of the total 82 lots proposed). This will entail the construction of the main entrance road and a portion of other roadways in order to access the 41 lots. Mr. Gould indicated that all 41 lots meet the minimum standards of the Rural Residence and Agricultural District in that they are at least 1.5 acres in size and can all support on-site waste disposal. The City Engineer provided a written report to the Board indicating that the engineering details were satisfactory for approval.

Mr. Gould indicated that Staff recommended Final Plan approval of Phase I with the conditions that construction of the remaining lots (Phase II) should commence within two years or be legally extended so as not to leave the completion of this project open ended, and that subdivision improvements guarantees be provided and approved by the City Engineer within 120 days of approval. Mr. Gould noted that the Preliminary Subdivision Plan was approved with two conditions. One, that there be no lot remnants, and two, that an emergency access to Forest Avenue be provided. Both of these conditions have been met.

Mr. Masters moved to approve the Final Subdivision Plan for Walden Parke, LLC, with the conditions that Phase II be submitted within two years for approval or extended, and that a suitable improvement guarantee be submitted within 120 days. Mr. Wheeler seconded the motion. Mr. Masters commended Dr. Oldenburg on his generosity for the two land gifts. The Planning Board voted 5 in favor and 0 opposed to the motion approve the Final Subdivision Plan with conditions, for Walden Park, LLC.

Item No. 5: Site Development Plan approval of a revision to the approved Site Development Plan for the addition of a berm in the buffer at 460 Stillwater Avenue in a Shopping and Personal Service District, and a Contract Shopping and Personal Service District. Bangor Parkade, Inc., applicant.

Timothy Woodcock, Esq., represented Bangor Parkade. John Toic, of Bangor Parkade, Inc., was also present at the meeting. Mr. Woodcock explained that this development parcel consists of two parcels. The owner of the parcel, Mr. Judson M. Grant, entered into a contract zone change agreement with the City to rezone 18 acres that was formerly the mobilehome park adjacent to Stillwater Gardens. He noted that the applicant had had 2 or 3 neighborhood meetings to discuss the project with the neighbors before submitting it to the Planning Board for approval. Mr. Woodcock said that the neighbors were extremely helpful although not all endorsed project. However, their comments helped in drafting up a contract zone change to mitigate the impact of this commercial project on their properties. Mr. Woodcock indicated that as a result, a 150-foot buffer along the boundary with Stillwater Gardens was proposed and approved. The total area for the 150-foot buffer is 5.5 acres. In addition, the contract zone change provided for planting specifications. Since that time, the developer has submitted plans for actual plantings, and the property owner and City have entered into an open space easement agreement.

Mr. Woodcock indicated that as this project has progressed it has become apparent that the developer had more top soil on this site than was contemplated. It occurred to them that this additional soil could be used for a berm that would serve as additional buffering. The applicant proposes to build this berm to a height of 6 feet and would be a platform for the vegetation. Mr. Woodcock also noted that the applicant had notified 12 of the abutting households and 6 were present at a meeting held in November, 2004 to discuss this proposal. Most of those in attendance were in favor of the additional buffering. Another abutting property owner who did not attend indicated that she was receptive to this concept. Mr. Woodcock also noted that Councilor Gratwick, Hope Brogunier and Lucy Quimby were also in attendance at this meeting. He noted that he had spoken to 9 out of the 12 abutting property owners and the consensus was that this berm would enhance the buffer.

Mr. Paul Brody of WBRC Architects/Engineer, explained that the addition of the berm will not change the planting plan. Field species of grass will be added and the planting will be on top of the berm. The berm will help with noise levels, and as far as visibility goes, the berm will provide more screening that just plantings would do. Mr. Brody shared an illustration of the proposed berm.

Mr. Rosenblatt asked what the end result will look like. Mr. Brody indicated on the illustrations. Mr. Clark asked for a clarification on how high the proposed berm is. Mr. Brody indicated that it would be between 5 and 6 feet high. Chairman Guerette asked if the berm would affect the approved plantings and the number of plantings proposed for the buffer zone. He also asked if the existing plant material in the 150-foot wide strip would be eliminated to accommodate the berm. Mr. Brody indicated that the plantings were the same as those approved only now they would be planted on the berm.

Chairman Guerette then opened the meeting up for comments from any of the neighbors. Mr. Claude Junkins, 82 Jennifer Lane, told the Board that he thought that the berm is a good idea. He also asked if the 150 feet is a straight line or over the curve. He indicated that the applicant has done some work to prevent erosion but that has failed in a couple of areas. Mr. Junkins said that he hopes that they will do a good job to maintain erosion control.

Ms. Beth Mercier, 31 Drew Lane, indicated that she did not disagree with the berm but said that she is concerned that the neighbors are continually promised things by this group such as that this would be a small strip mall with no large boxes, that the development would be pleasing to the eye, that any blasting damage that occurred would be taken care of by the City (and this has been refused), and that a traffic study would be done (and she has yet to see that one has been done). She noted that at the Transportation and Infrastructure Committee meeting, Councilor Farrington asked if the berm was built to be pleasing to the eye if she would support it. Ms. Mercier indicated that she would have to say no as she has not been given anything to believe that the mound of top soil on the site will be pleasing to the eye. She also expressed her concern that it would have a negative affect upon her property value. Ms. Mercier said that it is the applicant's job to package this and make it look pleasing and she added that what the neighborhood is being told is not what is being delivered.

Ms. Donna Ingraham, a Drew Lane resident, spoke in favor of the berm. She told the Board that since the mound has been put up it has reduced the noise level. She indicated that she would like to see it higher than 6 feet.

P. Andrew Hamilton, Esq., representing the property owner Mr. Judson Grant, told the Board that if the contract zone change conditions and the terms of the open space easement are not respected then there is a claim against both the property owner and developer to bring it into compliance. Mr. Hamilton also noted that the applicant has requested that the easement agreement for open space be amended to include the proposed berm.

Mr. Clark asked if the berm will be the same measurement of the 150-foot buffer. Mr. Woodcock indicated that he had made it clear to neighbors that if they did not want the berm they would not do it. Mr. Woodcock indicated that the width of the buffer is absolutely unchanged and it is in a determined place with a certain width. Traffic studies have been done and new signals at Drew Lane and Howard Street along Stillwater Avenue will be installed as a result of this development.

As no one else spoke, Chairman Guerette asked for Staff comments. Planner Gould explained that the applicant is requesting Site Development Revision approval to build a berm within the buffer area. On May 18, 2004, the site plan was originally approved and the plantings are exactly as they are today. The Contract Zone Change provided that the property owner enter into an open space easement with the City. When the applicant first approached the City with plans for the proposed berm, Staff felt that it was important that the open space easement also be amended. Mr. Gould said that Staff feels that berms are generally a favorable element within a buffer as they provide a physical barrier and do not change seasonally. The Planning Staff indicated that the plan as submitted does meet the contract zone change conditions, as well as, the submittal requirements for Site Development Plan approval. Staff recommended Site Development Plan Approval with the condition that the City Council approve the amendment to the open space easement to clarify that the berm is allowed.

Mr. Masters expressed his concern regarding safety issues around the very deep detention pond. Mr. Brody indicated that there will be a different fence installed when the site is complete and that there will be extensive plantings around and down the slopes of the detention pond. Mr. Brody added that the slopes of the detention pond have already been seeded and that the grass will pop up through the erosion control matting, and the plantings will be installed as soon as the berm issue is resolved.

Chairman Guerette had a question regarding whether or not measures were in place to prevent water runoff from flowing into the back yards of the abutting neighbors. Mr. Brody indicated that most of the water is going to go into the ground and down the side. He explained that there is a curb installed that works at collecting water runoff and directing it into the stormwater detention system before it even reaches the buffer.

Mr. King asked if the open space easement could be amended to remove the berm. Mr. Gould indicated that at present the open space agreement does not require that a berm be placed within the open space easement and there is no language that suggests that they can install a berm. In order to make it clear that the berm would be allowed, an amendment to the open space easement is needed. If an amendment is approved to allow for the berm and the applicant wishes to remove the berm, then the applicant would need to request another amendment to their site plan. Mr. Hamilton told the Board that he felt that this likely would be impractical to do, once it has been done.

Mr. Rosenblatt moved to approve the revised Site Development Plan for 460 Stillwater Avenue, Bangor Parkade, Inc., with the condition that the City Council approve an amendment to the open space easement to allow for the berm. Mr. Rosenblatt indicated that he is sympathetic to what the residents are going through, but said that he felt that the addition of the berm is better for the neighborhood than not to have the berm. Mr. King seconded the motion. The Board voted 5 in favor and 0 opposed to approving with condition the Site Development Plan for Bangor Parkade, Inc.

Item No. 6: Site Development Plan approval to construct a 30,000 square foot building for retail and office use located at 930 Stillwater Avenue (Crossroads Development) in a General Commercial and Service District. BEV, Inc., applicant.

Mr. Fred Marshall of Plymouth Engineering represented the applicant, BEV, Inc. Mr. Marshall explained that in 1994 the Planning Board approved a site plan for this site for a shopping center building and an office building. At that time, the shopping center building was built but the office building was not constructed. Since that time, several events have occurred, including an amendment to the Land Development Code increasing the setbacks on the lot and the City formalized the location of the proposed Parallel Service Road. Because of these events, the applicant needed to reconfigure the building on the site plan to meet these changes.

Mr. Marshall went on to explain that at the time the first building was constructed, utilities to serve both buildings were installed as well as the shared access drive. The applicant is now requesting approval of this previously approved site.

Mr. Clark asked where the office building would be located. Mr. Marshall indicated that it would be on Stillwater Avenue facing Stillwater Avenue. Mr. Masters asked if there was a traffic study. Mr. Marshall indicated that there was one done at the time of the original approval and that the Maine Department of Transportation indicates that it is still valid. Mr. Marshall also noted that this 30,000 square foot office building was counted in the original traffic permit.

Mr. Hamilton indicated that there has been a series of discussions regarding traffic in the Stillwater Avenue and Hogan Road and how it will be handled. He also made reference to the Task Force working on the Penjajawoc Stream corridor. He indicated that the applicant sat down with the City Engineer in 1994 and laid out the portion of the proposed Parallel Service Road on this parcel. Mr. Hamilton said that the owner had hired Mike Waugh of SEA to do a traffic study at the time of the original Site Location of Development Act approval. The applicant will be coming back before the Board again for Site Location of Development Act Modification approval. The applicant wanted to get the local Site Development Plan approval prior to moving forward with the more extensive submittal for Site Location of Development Act Modification approval.

Mr. Rosenblatt asked what was planned for outdoor lighting. Mr. Marshall indicated that they proposed standard shoebox type lighting the same as what is there now. Mr. Marshall indicated that they are not anticipating any greater light pollution than what is already out there at the mall area. Mr. Rosenblatt had a question regarding how the applicant proposes to handle storm water. Mr. Marshall indicated that what is proposed is what was permitted by the Department of Environmental Protection and approved by the City. The stormwater flows to the corner where a couple of catch basins are located and is then piped out to a detention pond on the corner of Hogan Road and Stillwater Avenue.

Chairman Guerette noted that this project is near the upland edge of an area being thought of as being environmentally sensitive. The Board has just finished a series of four meetings to gather information and comments for inclusion in the Comprehensive Plan update. Chairman Guerette indicated that people are concerned about the cumulative effect of continued development in the same area and it is an entirely different environment now. Chairman Guerette said that he felt that an updated traffic study would be pertinent for this project. He indicated that he was not making it a condition of approval but this is an area that the Board will be having discussions on. The landscape is changing but not necessarily in a negative way. The Board is now taking in more information that may not have been as important 11 years ago.

Mr. Marshall said that the traffic from this project has been factored in the traffic calculations for all subsequent developments. He said that he did not think it was fair to penalize this project because of subsequent projects that have been built. Mr. John Hamer, Assistant City Solicitor, reminded the Board that traffic is regulated by the Maine Department of Transportation and that traffic is not a criteria that the Planning Board can apply under the Land Development Code.

Mr. Rosenblatt asked if at the time of the Site Location of Development Act Modification if a revised updated traffic study will be a part of that modification. Mr. Andrew Hamilton indicated that it may be a part of the modification and said that it might be sensible to ask Mike Waugh to update the previous traffic study.

Mr. Masters felt that the applicant is not responsible for the traffic on Stillwater Avenue and that this project deserves approval. Mr. Masters added that the applicant has done a fine job with other projects that they have constructed in the City.

Mr. King had questions as to the impervious surface ratio of the project and the environmental impacts this might have as it is close to an environmentally significant habitat (Penjawoc Marsh). Mr. Marshall indicated that the lot has been cleared and is ready for development and provision has been made for the future Parallel Service Road, as it is an official City street. As far as the impervious surface goes, it is what the applicant owns and not the area reserved for the Parallel Service Road. The impervious surface will not exceed the requirements if the Parallel Service Road is constructed. Mr. Marshall also noted that had this building been constructed and had the Parallel Service Road been constructed, it would be five feet away from the property line.

Chairman Guerette then asked for Staff comments. Planner David Gould, explained that the applicant is requesting Site Development Plan approval to construct a 30,000 square foot building for retail and office use located off of Stillwater Avenue and Kittredge Road in a General Commercial and Service District. The plans, as submitted, meet the requirements for Site Development Plan submittal and Staff recommended approval. Mr. Gould indicated that the City of Bangor approved the prior Site Location of Development Act application for this project under delegated review authority. At that time in 1994, traffic was part of the Site Location of Development Act review. The City also requested a peer review by a traffic engineer. Mr. Gould noted that Staff has been in contact with the Maine Department of

Transportation regarding the question of whether or not they will honor the prior traffic permit. Staff is awaiting an answer as to whether or not any additional review will be required.

Mr. Clark moved to approve the Site Development Plan for 930 Stillwater, BEV, Inc., applicant. Mr. Rosenblatt seconded the motion. The Board voted 4 in favor and 1 opposed to approving the Site Development Plan for BEV, Inc.

APPROVAL OF MINUTES

Item No. 3: Planning Board Approval of Minutes.

Chairman Guerette indicated that the Board needed to approve the Minutes of the regular Planning Board Meetings of February 15, 2005 and March 1, 2005, as well as, the Neighborhood Workshop Meetings of February 8, 2005 and March 8, 2005.

Mr. Wheeler moved to approve all four sets of Minutes as noted by the Chairman. Mr. Rosenblatt seconded the motion. The Board voted 5 in favor and 0 opposed to approving the Minutes of the February 15, 2005 Meeting, the March 1, 2005 Meeting, the February 8, 2005 Neighborhood Workshop Meeting and the March 8, 2005 Neighborhood Workshop Meeting.

Item No. 7: Comprehensive Plan Update – Housing Element Discussion.

Mr. Masters asked to table this discussion to the Planning Board's next meeting or schedule another workshop meeting. Mr. Wheeler indicated that he had not had time to finish reading the materials.

Mr. Rosenblatt asked if more current housing data exists and what are the current housing needs. Planner Gould indicated that there is more data but that he did not know how much of this information would be helpful to the Board. Mr. Gould noted that Bangor is very diverse with its array of housing options and needs, the broadness of the population, and special needs groups. The Housing Plan tries to deal with all of these factors.

Chairman Guerette indicated that it would be nice to update some of this information now, and it would be helpful to have someone from the City who is in charge housing to discuss the housing needs and trends with the Board.

It was noted that T. J. Martzial, the Housing Coordinator in the Community Development Department, is in charge of housing and also sits on the Board of the Bangor Housing Authority. City Engineer Jim Ring noted that Stan Moses of the Community Development Department is also very knowledgeable about housing groups and trends.

Mr. Wheeler suggested inviting several of the realtors in the community to offer information. Chairman Guerette indicated that he would be glad to extend an invitation to representatives of some of the larger real estate firms.

Mr. King said that the information needs to be updated and he would like to have a discussion by the Board before inviting people to speak. Mr. Wheeler felt that asking T. J. Martzial to speak to the Board would be worthwhile. It was the consensus of the Board to invite both T. J. Martzial and Stan Moses from the Community Development Department to speak at the next meeting.

Mr. Guerette noted that the motion to table this discussion to a Planning Board Workshop Meeting on Tuesday, April 12, 2005 needed a second. Mr. Wheeler seconded the motion. The Board voted 5 to 0 in favor.

The meeting was adjourned at 9:20 p.m.